THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

W.P.Nos.7652, 4130, 6978, 7441, 7601, 7722, 7862 and

9729 of 2005

Date of Disposal : 28th July, 2005.

Between :

M/s.Chaitanya Granite Metal Works and others.. petitioners

And

The Government of Andhra Pradesh and others.. respondents

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

W.P.Nos.7652, 4130, 6978, 7441, 7601, 7722, 7862 and

9729 of 2005

COMMON ORDER:

1. These batch of writ petitions are filed assailing the proceedings No.4572/Q3/2001-23, dated 28.2.2005, whereby and whereunder the quarry lease for road metal in R.S.No.1 of Kondapally Village, Ibrahimpatnam, Krishna District

has been determined with immediate effect under sub rule IXViii) of Rule 31of APMMC Rules, 1966.

2. Since common question is involved in all these writ petitions they are being disposed of by this common order.

3. Virtually this is second round of litigation. The earlier round of litigation was commenced when a show cause notice was issued by the Assistant Director, Mines and Geology, Vijayawada proposing to cancel the quarry lease granted in favour of the petitioners. The core issue involved in those writ petitions was whether R.S.No.1 of Kondapally village, Ibrahimpatnam, Krishna District, is a government unassessed waste dry land or forest land. The earlier batch of writ petitions came to be disposed of by a common order on 28.9.2004. It is apposite to refer paras 10 to 12 of the common judgment in the earlier round of litigation and they are :

> " 10. In this court, as already observed, except the bare entry as 'Adavi', no evidence is forthcoming from either side and in the absence of proper assistance from the proper quarters, this Court would not be in a position to go into such questions and come to any conclusion. It is also needless to point out that even in between the two departments of the State Government i.e., mining and forest, there appears to be no proper report there is no attempt on the part of the mining authorities to check and verify as to whether the land for which the mining leases are being granted is a forest area and prohibition applies. The leases are being granted in a routine way without any consultation as such from the forest department. Though as per the procedure as contemplated for grant of lease under the mining regulations, there is no pre-condition as such to obtain any clearance certificate as sought to be done from the revenue authorities. In spite of laying down the principles and giving directions, apparently, no serious attempt has been made by the State Government to see that forest areas are properly identified, so as to give effect to the directions and make the bar into a real enforcement. In the aforesaid circumstances, there is no other alternative, but to have a proper and due consideration jointly with all the concerned, as to take a decision on the identification of the various areas for the proper implementation of the Forest Conservation Act, 1980.

11. In the circumstances, I do not find any justification to show any indulgence in favour of the petitioners herein, unless and until proper verification is done. As already observed, in the absence of any such exercise, any mining operations would not only in the teeth of the mandate contained under Forest Conservation Act, 1980, but also would seriously effect the ecology, as pointed out by the Apex court. In the event, if it is ultimately found that land is not a forestland and the petitioners are entitled to carrying on operation, as already observed by the Division bench in the above appeal, they can successfully make a claim for damages.

12. In the circumstances, the writ petitions are disposed of directing respondent No.1 herein to take immediate steps for proper identification of the forest areas jointly with all the concerned departments viz., Mines, Forests, Revenue and also with due notice to any representation from the Central Government before any action is taken. The entire such exercise shall be completed within a period of two months and ultimate decision shall be under due intimation to the petitioners/quarry leaseholders. It is needless to mention that till completion of the enquiry, no cancellation order be passed. No costs."

4. In compliance of the order passed in the above batch of writ petitions, a committee was constituted under G.O.Rt.No.90, dated 11.1.2005 for proper identification of various lands in R.S.No.1 of Kondapally Village, Ibrahimpatnam, Krishna District. The committee comprises the following members :

1. Joint Collector, Krishna District-Chairman.
2. The Central Chief Conservator of Forests, Regional Office, Ministry of Environment and Forests, Government of India, Benagalore area is representative- Member.
3. The Divisional Forest Officer, Krishna District-Member.
4. Deputy Collector, Mines and Geology, Kakinada-Member.

The committee met on 11.1.2005. The members participated in the committee are :

1. Sri.P.Sampath Kumar, IAS, Joint Collector, Krishna, Machilipatnam.

2. Sri.Buddash Prakash M.Jyothi, Sub-Collector, Vijayawada.

3. Sri.K.Suryanarayana Murthy, Divisional Forest Officer, Krishna Division, Vijayawada.

4. Sri.N.Ranga Rao, Deputy Director, Mines and Geology, kakinada.

5. Sri.A.V.Subramanyam, Assistant Geologist, Mines and Geology, Vijayawada.

6. Smt.B.Sarada, Mandal Revenue Officer, Ibrahimpatnam.

The outcome of the joint inspection is that the land in R.S.No.1 of Kondapally Village, Ibrahimpatnam, Krishna District is a forest land since the same has been described as 'forest' in the revenue records in the remarks column. The concluding paragraph of the joint inspection report reads as follows:

" Since the land is described as "Forest" in the revenue records in remarks column, it will attract the provisions of forest conservation Act, 1980. Hence, quarrying metal in these area is violation of Forest Conservation Act, 1980. So, as per the forest conservation Act all the (34) lease holders may be directed to approach the Forest Department and to process proposals under the provisions of the Forest Conservation Act. It is said that (12) members, to the extent of 24.796 hectors already approached the Forest Department and submitted proposals u/s 2 of Forest Conservation Act, 1980. In view of that the Committee has felt that compensatory land may be alienated to the Revenue Department to the extent of land leased out to the quarry holders as per the Forest Conservation Act, 1980."

5. The Government of Andhra Pradesh, Industries, Commerce and Mines II, Department taking note of the report of the committee issued instructions to the Director of Mines and Geology to cancel all quarry leases existing in R.S.No.1 of Kondapally Village, Ibrahimpatnam, Krishna District, after following due procedure of law. Para 2 of the government memo No.3177/M.II(1)/2002-14, dated 5.2.2005 reads as follows:

" 2. The Director of Mines and Geology is therefore, requested to cancel all the quarry leases existing in R.S.No.1 of Kondapally Village, Ibrahimpatnam, Krishna District after following the due procedure and advice the lease holders to come afresh for grant of quarry leases in

the said area by complying with the provisions of Forest Conservation Act, 1980."

The Director of Mines and Geology in turn instructed the Deputy Director of Mines and Geology, Kakinada to cancel all quarry leases existing in R.S.No.1 of Kondapally Village, Ibrahimpatnam, Krishna District. The Deputy Director of Mines and Geology, Kakinada determined the quarry leases with immediate effect under the impugned proceedings dated 28.2.2005. Hence, these batch of writ petitions assailing the order of Deputy Director, Mines and Geology, Kakinada determining the quarry leases of the petitioners.

6. To complete the narration of facts I may state that the Deputy Director, Mines and Geology, Kakinada advised the petitioners to seek for a fresh grant of quarry lease in the forest area by complying the provisions of Forest Conservation Act, 1980. In nutshell, the stand of the Department of Mines and Geology is that R.S.No.1 of Kondapally Village, Ibrahimpatnam, Krishna District is a forest land and thus consent of the Forest Department is essential for grant of quarry lease. The petitioners assail the order of the 3nd respondent i.e. Deputy Director of Mines and Geology, Kakinada on the following grounds:

a. R.S.No.1 of Kondapally Village, Ibrahimpatnam, Krishna District is not a reserved forest land and therefore Forest Conservation Act, 1980 is not at all applicable to the said land;

b. There is no notification issued by the Government of Andhra Pradesh under the provisions of A.P. (AA) Forest Act, 1967 reserving the area in question as a forest area;

c. The report of the committee is vitiated since objections from the petitioners have not been called for and no notice has been given regarding the joint inspection;

d. The 3rd respondent without either issuing any show cause notice or giving any opportunity to the petitioners issued the impugned proceedings canceling the mining leases.

7. The respondents filed counter affidavits. G.Ramachandra Rao has sworn to the counter affidavit filed on behalf of Department of Mines and Geology and whereas Smt.Sobhana Kamala Sudarsana Rao sworn to the counter affidavit filed on behalf of Deputy Conservator of Forests. The counter of Department of Mines and Geology be summarized in brief as : Quarry lease for road metal in R.S.No.1 of Kondapally Village, Ibrahimpatnam, Krishna District was granted after obtaining no objection certificate from the Mandal Revenue Officer, Ibrahimpatnam. R.S.No.1 of Kondapally Village, Ibrahimpatnam, Krishna District admeasuring an extent of 397.50 acres is classified as unassessed waste dry land. The Deputy Director of Mines and Zeology, Kakinada has issued a telegram dated 26.1.2002 to the petitioners with a direction to stop quarrying operations in R.S.No.1 of Kondapally Village, Ibrahimpatnam, Krishna District because the Sub-Collector, Vijayawada vide letter No.Rc A8.2846/01, dated 22-1-2002 has reported that R.S.No.1 of Kondapally Village, Ibrahimpatnam, Krishna District in the revenue records has been classified as 'ADAVI' and hence requested to cancel all the quarry leases as per Sec.2 of Forest (Conservation) Act, 1980. Accordingly necessary proposals have been submitted by the Assistant Director, Mines and Geology, Vijayawada for cancellation of all leases. The Deputy Director, Mines and Geology has issued a show cause notice to all the quarry lease holders. The said show cause notice came to be questioned in W.P.No.4720 of 2003 and batch. The said writ petitions came to be disposed of on 28.9.2004 with a direction to take immediate steps for proper identification of forest area jointly with all the concerned departments. In pursuance of the directions of the court, a committee was constituted and the said committee inspected the land and submitted report. As per the committee report, the land in question has been treated as 'forest land' in view of the same being recorded as such in the revenue records. Basing on the inspection report, the Deputy Director, Mines and Geology, Kakinada cancelled all quarry leases under Rule 31(18) of APMMC Rules, 1966. As many as 11 lease holders have approached the Forest Department for clearance. Since the leases have been cancelled in pursuance of the show cause notice already issued, the writ petitioners are not entitled to any relief.

8. The counter affidavit filed on behalf of the Divisional Forest Officer, Krishna

District reads that the land in question is recorded as ‘forest land’ in the revenue records and thus it is a forest land. The Forest (Conservation) Act, 1980 overrides all Acts as far as use of forest land for non-forestry purposes. Mining and quarrying come under the category of non-forestry purpose. The Committee constituted in pursuance of the court order has observed that the quarry leases area in question attracts the provisions of Forest (Conservation) Act, 1980. Therefore the petitioners are required to obtain necessary approval under Forest (Conservation) Act for continuation of quarrying operation in the land. If the lease is granted prior to the enactment of Forest (Conservation) Act, 1980 and the same is in currency and no fresh braking up of the forest land is involved, then approval under Forest (Conservation) Act, 1980 is not required. Otherwise, the lessee is required to obtain approval under Forest (Conservation) Act, 1980.

9. Counter affidavit filed on behalf of 6th respondent-Divisional Forest Officer, Krishna Division, Vijayawada reads that the land in question has been recorded as ‘ADAVI’ in re-settlement register of the village of Kondapalli No.(35) of revenue records. According to the Forest (Conservation) Act, 1980, the term ‘forest land’ defined in Sec.2 of the Act will not only include ‘forest’ as understood in the dictionary sense, but also any area recorded as forest in the government records irrespective of ownership. Therefore, the land existing in R.S.No.1 of Kondapally Village, Ibrahimpatnam, Krishna District attracts the provisions of Forest (Conservation) Act, 1980.

10. Heard Sri.T.Rajendra Prasad, learned counsel appearing for the petitioners in W.P.Nos.7652 and 4130 of 2005, Sri.A.Ramalingeswar Rao, learned counsel appearing for the petitioners in W.P.Nos.6978, 7441, 7601, 7722, 7862 and 9729 of 2005, learned Government Pleader for Mines and Geology, learned Government Pleader for Industries and Commerce and learned Assistant Solicitor General appearing for the respondents.

11. It is a matter of record that certain writ petitions were filed questioning the show cause notice issued to the lessees proposing cancellation of their leases. Those writ

petitions came to be disposed of with a direction to the respondents therein to take immediate steps for proper identification of forest areas jointly with all the concerned departments. Accordingly the Government constituted a committee in G.O.Rt.No.19, dated 11.1.2005. The committee inspected the land on 21.11.2005 and submitted its report. As per the report, the land in question is a forest land. Sri.T.Rajendra Prasad, learned counsel appearing for the petitioners in W.P.Nos.7652 and 4130 of 2005 contends that the conclusion arrived at by the committee is not based on any material and therefore no reliance can be placed on the inspection report. He would further contend that mere entry in the remarks column of re-settlement register is not sufficient to categorize the land in question as a forest land. Whereas it is submitted by learned Government Pleader for Mines and Geology that as per A.P. Village Accounts Manual Rules 'reservation of land' is required to be mentioned only in the remarks column and therefore the inspection committee is justified in taking note of the entry in the remarks column of re-settlement register and classifying the land as forest land. He refers to A.P.Village Accounts Manual Rules whereunder guidelines to the Village Assistants have been issued with regard to making entries in the permanent register. Reserved lands are required to be mentioned in column No.11 as per the said guidelines. I deem it appropriate to refer the relevant portion in the guidelines and it is thus:

> " Reserved lands:- The word "Reserved" should be entered in the column of remarks against all lands of the following descriptions which are ordered to be reserved in the Board's Standing Orders on the ground that their assignment is objectionable.
>
> a. land which although assessed has been reserved for Government, village or other special purpose;
>
> b. lands reserved under the rules of The A.P.Forest Act;
>
> c. lands within Port limits; and
>
> d. assessed waste lands and all lands including village site which are or may become at the disposal of government by relinquishment escheat, etc., situated within half a mile of the boundary of a railway station. Lands of this class should also be formally transferred to poramboke."

The guidelines issued to the Village Assistants are very clear that in case land is a forest land, the same is required to be mentioned in the remarks column. It is no

more in dispute that the land in question has been recorded as forest land in the remarks column of the re-survey settlement register. The Supreme Court in T.N.GODAVARMAN THIRUMULKPAD V. UNION OF INDIA held that the word 'forest' must be understood according to its dictionary meaning. Its description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2 will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. Therefore, I find that the entry in the re-survey settlement register is sufficient to hold that the land in question is a forest land.

12. It is nextly contended by learned counsel appearing for the petitioners that the Forest Department never claimed the land as a forest land and therefore the entries made in column No.11 has no significance. In support of his submissions, he refers to the correspondence between the Revenue Department and the Forest Department and vice versa. The entire correspondence was much earlier to the joint inspection which came to be conducted in pursuance of the directions given by this Court in earlier batch of writ petitions. Therefore, the earlier correspondence between the Forest Department and the Revenue Department prior to the joint inspection is of no avail to the petitioners.

13. A further submission has been made by learned counsel for the petitioners that since the lands in question have not been notified under section 4 of Indian Forest Act, the provisions of Forest (Conservation) Act, 1980 cannot be made applicable. The contention at the first blush appears to be sound. But on close scrutiny of the provisions of Indian Forest Act, 1927, A.P. Forest Act, 1967 and Forest (Conservation) Act, 1980, the contention does not detain me long to conclude that notification is required only when the land is to be treated as 'reserve forest'. Under section 4 of A.P. Forest Act, 1967 notification is required whenever any land is to be treated as reserve forest. I deem it appropriate to refer Sec.4 of A.P.Forest Act, 1967 which reads as under:

" 4. Notification by Government:- (1) Whenever it is proposed to

constitute any land as a reserved forest, the Government shall publish a notification in the Andhra Pradesh Gazette and in the District Gazette concerned in any;

a. specifying, as nearly as possible, the situation and limits of such land;

b. declaring that it is proposed to constitute such land as reserved forest;

c. appointing a Forest Settlement Officer to consider the objections, if any, against the declaration under Clause (b) and to enquire into and determine the existence, nature and extent of any rights claimed by, or alleged to exist in favour of, any person in or over any land comprised within such limits, or to any forest produce of such land, and to deal with the same as provided in this Chapter.

Explanation:- (1) For the purpose of Clause (a), it shall be sufficient to describe the limits of the land by any well-known or readily intelligible boundaries, such as roads, rivers, bridges and the like.

2. A person appointed to be a Forest Settlement Officer under Clause © of sub-section (1) shall be an officer of the Revenue Department not below the rank of a Revenue Divisional Officer.

3. Any forest officer may represent the Forest Department at the inquiry conducted under this Chapter."

Even under section 4 of the Indian Forest Act, 1927 notification is required when any land is to be treated as reserve forest. Sec.4 of the Indian Forest Act, 1927 reads as under:

" 4. Notification by State Government:-

1. Whenever it has been decided to constitute any land a reserved forest, the State Government shall issue a notification in the Official Gazette;

e. declaring that it has been decided to constitute such land a reserved forest;

f. specifying, as nearly as possible, the situation and limits of such land; and

g. appointing an officer (hereinafter called "the Forest Settlement Officer)" to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest produce, and to deal with the same as provided in this Chapter.

Explanation: For the purpose of Clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well known or readily intelligible boundaries.

2. The officer appointed under Clause © of the sub-section (1) shall ordinarily be a person not holding any forest office except that of Forest Settlement Officer.

3. Nothing in this Section shall prevent the State Government from appointing any number of Officers not exceeding three, not more than one of whom shall be a person holding any forest office except as aforesaid, to perform the duties of a Forest Settlement Officer under this Act."

The provisions referred to above deal with the notifications when any land is to be treated as reserved forest. It is not the case of the respondents that the lands in question have been treated as reserved forests. Therefore, the contention of the counsel for the petitioners that unless notification is issued as contemplated under the provisions of the above referred Acts, the land in question cannot be treated as a forest land has no substance.

14. It is nextly contended by learned counsel appearing for the petitioners that two calendar months' notice is required for determination of the lease and since the impugned order is not preceded by such notice, the same is liable to be set aside. IN support of his submissions reference has been made to Rule 31 (XVIII) of A.P. Minor Mineral Concessions Rules, 1966, which reads as follows:

" 31 (XVIII): The Deputy Director may in consultation with the Government determine the lease if it is considered by him necessary to do so in the public interest after giving two calendar months' notice in writing."

At this juncture, one aspect is to be taken note of and it is that a batch of writ petitions were filed when a show cause notice was issued to the licensees. The said writ petitions came to be disposed of with a direction to the respondents therein to constitute a committee to conduct a joint inspection to know the nature of the lands. After the joint inspection, the impugned notice came to be issued. Therefore, the impugned notices are based on the show cause notices issued earlier. Thus, it cannot be said that the impugned orders are not preceded by two calendar months' notice. Once the lands in question are forest lands the writ petitioners have to take 'no objection' from the Central Government. It is a matter of record that some of the licensees have already approached the Central Government for no objection.

15. In the result, I find that these batch of writ petitions are devoid of merits and they are hereby dismissed. No costs.

Tnb

Dated: 28-07-2005. (B.Seshasayana Reddy, J)

Cc one week.